



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DARBY & DARBY P.C.
P. O. BOX 5257
NEW YORK NY 10150-5257

COPY MAILED

NOV 29 2006

OFFICE OF PETITIONS

In re Application of
Erik Ekelhoff
Application No. 10/001,838
Filed: November 27, 2001
Attorney Docket No. 010481-US

DECISION ON PETITION

This is a decision on the petition filed September 18, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the nonfinal Office action of February 28, 2003, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before May 28, 2003. In the absence of a timely filed reply, the Office mailed a Notice of Abandonment on October 2, 2003.

Petitioner asserted that he submitted a timely reply to the nonfinal Office action accompanied by a certificate of mailing dated May 26, 2003. With the present petition, petitioner submitted a copy of the previously mailed reply in the form of an amendment, bearing a certificate of mailing dated May 26, 2003. The certificate of mailing of May 26, 2003, would have rendered the amendment timely filed if received in the USPTO; however, the application file does not include the original reply or the certificate of mailing.

Pursuant to 37 CFR 1.8(b):

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The present petition satisfies the requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to file a timely reply to the nonfinal Office action of February 28, 2003, is withdrawn and the application is restored to pending status. The Office will accept the copy of the reply submitted with the petition in place of the reply mailed on May 26, 2003.

This application is being referred to Technology Center AU 1746 for appropriate action on the amendment submitted on September 18, 2006 (certificate of mailing dated May 26, 2003).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination process should be directed to the Technology Center.



Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions